

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**  
**CIVIL APPELLATE JURISDICTION**  
**REVIEW PETITION NO.102 OF 2018**  
**IN**  
**WRIT PETITION NO.6225 OF 2017**

|                          |               |
|--------------------------|---------------|
| Bhushan Dattatraya Kedar | .. Petitioner |
| Versus                   |               |
| Dipti Bhushan Kedar      | .. Respondent |

...

Mr. S.S.Wagh with Mr.Vijaykumar B. Dighe for the petitioner in  
RPW No.102 of 2018  
Ms.Dhwani Mehta I/b M/s.D.M.Law Chambers for the  
petitioner in WP 6225/17.  
Ms.Dipti Kedar respondent present in person.

**CORAM: SMT. BHARATI H.DANGRE, J**  
**(In chamber)**  
**DATED : 28<sup>th</sup> SEPTEMBER 2018**

**P.C:-**

1           Review Petitioner seeks a review of the judgment  
passed by this Court on 4<sup>th</sup> May 2018. By the said judgment,  
two writ petitions i.e. Writ Petition No.4011 of 2017 and WP  
No.6225 of 2017 came to be disposed of, the former one being  
filed by the husband and latter filed by the wife. Writ Petition  
No.4011/17 came to be dismissed whereas Writ Petition No.

6225/17 filed by the wife challenging the order dated 7<sup>th</sup> March 2017 by the Family Court, was allowed.

2           The present Review Petition is taken out by the husband seeking review of the said judgment on the ground that certain material facts have been suppressed from the Court, and resultantly, a mistake and error apparent on the face of record has occurred. In the Review Petition, it is alleged that a false statement was made before this Court on behalf of the wife that an application seeking amendment and inserting certain other grounds of invocation of provisions of Section 498A against the husband and his family members making wild and defamatory allegations and this amounted to cruelty and this application for amendment was rejected. According to the wife, the second Petition seeking divorce revolves around the same cause of action which is sought to be invoked in HMP No.218 of 2009 filed by the husband which was already rejected. This statement, according to the learned counsel for the review petitioner is incorrect and is misleading one. It is the submission of the learned counsel that based on this

statement, this Court formed an opinion that the previous and the present divorce petitions are based only on facts which took place during cohabitation between the husband and wife from 5<sup>th</sup> July 2006 to 4<sup>th</sup> August 2008.

I have perused the application for review and I have also heard learned counsel Shri S.S. Wagh appearing for the petitioner and Ms.Dhwani Mehta appearing for the respondent. On perusal of the said review application and on consideration of the arguments, the ground which has been pressed into service is in respect of the factum of non-consideration of the application for amendment being allowed in the Hindu Marriage Petition. Learned counsel for the petitioner pointed out that a categorical statement was made by the learned counsel for the respondent that the amendment application was rejected and based on this, this Court had made the observations to the effect that the amendment application was rejected and a conclusion was derived that HMP-1 and HMP-2 are based on identical cause of action. Learned counsel for the petitioner would also submit that the argument that is advanced in respect of filing of the criminal complaint was

pleaded in the petition itself and this according to the learned counsel for the petitioner, gave an additional ground for alleging cruelty and that is why he sought to distinguish the HMP-1 from HMP-2.

3           I have carefully perused the judgment delivered by me and reconciled the same in terms of the grounds raised in the Review Application. It is no doubt true that the fact in respect of the amendment application being allowed was not brought to the notice of this Court, but even if it would have been looked into, the contextual findings arrived at by this Court in respect of HMP-2 and HMP-1 being based on the same cause of action, would not have been something different. This Court had categorically recorded a finding by taking into consideration the law on the point of *res judicata* and has noted that the grounds which were permissible for the petitioner be raised, if were not raised, then it cannot be said that it is open for him to raise the said grounds. The principle of *res judicata* has been applied by this Court in the peculiar facts and on consideration of the proceedings which were placed on record.

In any contingency, in view of the order passed by the District Judge, Nashik, and being aggrieved by which Writ Petition No.4011/17 was filed by the petitioner husband, the appeal has been restored to file and then it is open for the petitioner husband to argue about the legality of the order by which his first HMP came to be dismissed on the ground that there is no cruelty. Even otherwise, it is the specific case of the petitioner that during the argument of the appeal arising out of the First HMP before the District Court and when it was opined by the District Court as to why the Appeal is being contested with other divorce petition is pending before the Family Court and in this backdrop, Application (Exhibit-17) was submitted to the Court which was allowed and the First HMP was allowed to be withdrawn along with the Appeal. The permissibility of such an order is already discussed by me in detail in my judgment. Once these proceedings are made alive and are permitted to be proceeded with, along with the appeal in the First HMP, then at this stage there is no question of entertaining the 2<sup>nd</sup> HMP since the petitioner cannot ride on two horses and prosecute both the petitions at the same time.

As far as the application filed by the wife which came to be rejected by the Family Court and being aggrieved by which she had approached this Court in the second petition i.e. Writ Petition No.6225/17, being aggrieved by the order passed by the Judge, Family Court rejecting her contention of *res judicata*, since the first HMP proceedings are re-opened in form of an appeal and they are being prosecuted, the second proceedings, in any contingency, are not permissible to be continued and this court had specifically set aside the order passed by the Judge, Family Court, thereby rejecting the plea of *res judicata*.

In such circumstances, this Court is of the opinion that even if the facts which the learned counsel has set out in paragraph no.5, 6 and 7 in the Review Petition were not pointed out to this Court, this in any way, has not affected the decision of this Court since the findings are recorded on merit and in such circumstances, it cannot be said that there is any error apparent on the fact of record to enable the petitioner to invoke the jurisdiction to review.

For the reasons recorded above and in the  
circumstances of the case, application is rejected.

**(SMT. BHARATI H. DANGRE, J.)**

Manali  
Prasanna  
Tilak

Digitally  
signed by  
Manali  
Prasanna  
Tilak  
Date:  
2018.10.09  
18:12:22  
+0530

*Tilak*